



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0078]

RIN 1625-AA00

Safety Zones; Annual Independence Day Fireworks Displays,
Skagway, Haines, and Wrangell, AK.

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish the following three permanent safety zones on the navigable waters of (1) Taiya Inlet in the vicinity of on the White Pass and Yukon Railway Dock, Skagway; (2) Portage Cove, Haines and; (3) Wrangell Harbor, Wrangell, Alaska. These proposed safety zones are necessary to protect spectators and vessels from the hazards associated with the annual Independence Day Fireworks Displays held in each location. This rule is intended to restrict all vessels from a portion of the navigable waters in the immediate vicinity of the fireworks launch platforms, before, during and immediately after the fireworks event.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Requests for public meetings must be received by the Coast Guard on or [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods. FOR FURTHER INFORMATION

CONTACT: If you have questions on this rule, call or e-mail Lieutenant Patrick Drayer, Waterways Management Division, U.S. Coast Guard Sector Juneau, telephone 907-463-2465, e-mail Patrick.A.Drayer@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2013-

0078] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-0078) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an

association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

The Coast Guard has previously issued temporary final rules establishing safety zones for fireworks displays occurring on the waters in the vicinity of Haines, Skagway and Wrangell, AK (77 FR 39172). This rule proposes to establish three permanent safety zones for the annually recurring Independence Day fireworks displays in Haines, Skagway and Wrangell and is expected to reduce the administrative burden associated with the creation of temporary safety zones each year.

C. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The cities of Skagway, Haines, and Wrangell, Alaska hold fireworks displays on or about the July 4th of each year to celebrate Independence Day. The fireworks will be launched from a barge or waterfront facility. This proposed rule is necessary to ensure the safety of spectators and vessels from hazards associated with fireworks. Fireworks launched in close proximity to watercraft pose a significant risk to public safety and property. Such displays draw large numbers of spectators on vessels. The combination of a large number of spectators, congested waterways, darkness punctuated by bright flashes of light, and burning debris has the potential to result in serious injuries or fatalities. The proposed safety zones will restrict vessels from operating within a portion of the navigable waters around the fireworks launch platforms during the enforcement period which will be immediately before, during, and immediately after the fireworks displays.

D. Discussion of Proposed Rule

The Coast Guard proposes to establish three permanent safety zones on the navigable waters of Taiya Inlet, Skagway; Portage Cove, Haines; and Wrangell Harbor, Wrangell, AK. The proposed safety zones are necessary to ensure the safety of spectators and vessels from hazards associated with fireworks displays. Each safety zone will include the navigable waters within a 300-yard radius around the fireworks launch platform. The fireworks displays are expected to occur between 11:00 p.m. and 11:45 p.m.

In order to coordinate the safe movement of vessels within the area and to ensure that the area is clear of unauthorized persons and vessels before, during, and immediately after the fireworks launch, these zones will be enforced from 10 p.m. until 2:30 a.m. This effective period of the safety zones is to account for the possibility that if the fireworks displays are postponed because of inclement weather, we would be able to adjust the enforcement period of the safety zones. The specific date and duration of the enforcement period will be announced in the Local Notices to Mariners and maritime advisories widely available to mariners.

Vessels will be able to transit the surrounding area and may be authorized to transit through the proposed safety zone with the permission of the COTP or the designated representative. Before activating the zones we will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

This rule is being proposed to provide for the safety of life on the navigable waters during the events, and to give the public the opportunity to comment on the proposed safety zone locations, size, and length of time the zone will be activated.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard's enforcement of these proposed safety zones will be of short duration, approximately three hours. Furthermore, vessels may be authorized to transit through the proposed safety zones with the permission of the COTP.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit, anchor, or fish in a portion of the navigable waters of Taiya Inlet, Skagway; Portage Cove, Haines; and Wrangell Harbor, Wrangell, AK; during the periods of enforcement of these proposed safety zones.

These proposed safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons. These proposed safety zones would be subject to enforcement only immediately before, during, and immediately after the firework displays that may occur from July 3 at 10 p.m. ADT until 2:30 a.m. ADT on July 5 each year. Vessel traffic could pass safely around the proposed safety zones. Before the enforcement of any of the safety zones, we would issue maritime advisories widely available to users of the waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the

Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private

sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the

distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of three permanent safety zones on the navigable waters of Taiya Inlet, Skagway; Portage Cove, Haines; and Wrangell Harbor, Wrangell, AK, respectively. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical

Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.1712 to read as follows:

§ 165.1712 Safety Zones; Annual Independence Day Firework Displays, Skagway, Haines, and Wrangell, AK.

(a) Regulated Areas. The following areas are permanent safety zones: (1) all navigable waters of Taiya Inlet within a 300-yard radius of the fireworks launching point located on the White Pass and Yukon Railway Dock at approximate position 59°26.70' N, 135°19.58' W in the vicinity of the mouth of the Small Boat Harbor, Skagway, Alaska. (2) all navigable waters of Portage Cove, Haines, AK within a 300-yard radius around the fireworks

launch area, centered at approximate position 59° 14'16.72"N, 135° 25'35.79"W; (3) all navigable waters of Wrangell Harbor within a 300-yard radius of the fireworks launch platform centered at approximate position 56°28.223' N and 132°23.285' W.

(b) Effective date. This rule will be effective from 10 p.m. on July 3 until 2:30 a.m., July 5, of each year.

(c) Definitions. The following definitions apply to this section: (1) Designated Representative-a "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port, to act on his or her behalf.

(d) Regulations. (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply. (2) No vessels, except for fireworks barge and accompanying vessels, will be allowed to transit the safety zones without the permission of the COTP or the designated representative. (3) Vessel operators desiring to enter or operate within any of the regulated areas shall contact the COTP or the designated representative via VHF channel 16 or 907-463-2990 (Sector Juneau command center) to obtain permission to do so.

Dated: February 19, 2013

M. N. Jones
Commander, U.S. Coast Guard
Acting Captain of the Port Southeast Alaska

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Date: 04/01/2013]